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HOUSE BILL 1236 By
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SENATE BILL 1675
By Miller J

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, to provide protection to consumers who own, lease, or have a security interest in assistive devices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding §§ 2--12 as a new part.

SECTION 2. Terms used in this Act mean:

(1) "Assistive device," any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity, including a manual wheelchair, motorized wheelchair, motorized scooter, adaptive transportation aid, and other aid that enhance the mobility of an individual; hearing aid, telephone communication device (TTY), assistive listening device, and other aid that enhance an individual's ability to hear; voice synthesized computer module, optical scanner, talking software, Braille printer, and other device that enhances an individual's ability to communicate; and breathing, feeding, or any other assistive devices that enables a person with a disability to perform other major life activities, communicate, see, hear, or maneuver; but does not include batteries or non-functional accessories.

(2) "Assistive device dealer," a person who is in the business of selling assistive devices.

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(3) "Assistive device lessor," a person who leases an assistive device to a consumer or who holds the lessor's rights under a written lease.

(4) "Collateral costs," expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of sales tax and obtaining an alternative assistive device.

(5) "Consumer," any of the following:

(a) The purchaser of an assistive device if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(b) A person to whom the assistive device is transferred for purposes other than resale if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(c) A person who may enforce the warranty; and

(d) A person who leases an assistive device from an assistive device lessor under a written lease.

(6) "Demonstrator," an assistive device used primarily for the purpose of demonstration to the public.

(7) "Early termination cost," any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set in that lease and the return of an assistive device to a manufacturer pursuant to this Act. Early termination costs include a penalty for prepayment under a finance agreement.

(8) "Early termination saving," any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of an assistive device to a manufacturer under this act. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total amount for which the lease obligates the consumer

during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination;

(9) "Major life activity," a function such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(10) "Manufacturer," person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch, and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer or assistive device lessor.

(11) "Nonconformity," a condition, defect, or malfunction that substantially impairs the use, value or safety of an assistive device and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, but not a condition, defect, or malfunction that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by a consumer.

(12) "Reasonable attempt to repair," any of the following occurring within the term of an express warranty applicable to a new assistive device or within 1 year after first delivery of the assistive device to a consumer, whichever is sooner:

(a) The same nonconformity is subject to repair at least twice by the manufacturer, assistive device lessor or any of the manufacturer's authorized assistive device dealers;

(b) The assistive device is out of service for at least thirty cumulative days because of a nonconformity.

(13) "Express warranty," an express warranty as determined under § 47-2-313.

SECTION 3. A manufacturer who sells or leases an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty may not be less than one year after first delivery of the assistive device to the consumer.

In the absence of an express warranty from the manufacturer, the manufacturer is deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the value of the assistive device to the consumer.

An express warranty does not take effect until the consumer takes possession of the new assistive device.

SECTION 4. If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one year after delivery of the assistive device to a consumer, the nonconformity shall be repaired as required by this Act at no charge to the consumer. If the manufacturer has authorized the dealer or lessor to make the repair, the dealer or lessor shall be reimbursed by the manufacturer for the dealer's or lessor's cost for the repair.

SECTION 5. If, after a reasonable attempt to repair the device, the nonconformity is not repaired, the manufacturer, at the direction of a consumer described under subsection (5)(a), (5)(b), or (5)(c) of section 1 of this Act, shall do one of the following:

(1) Accept return of the assistive device, replace the assistive device with a new assistive device of comparable quality, size, and function; and refund any collateral costs.

(2) Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device or any third party who purchased the assistive device, as their interest may appear, the full purchase price plus any finance charge, sales tax, shipping costs and collateral costs paid by the consumer at the point of sale, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the denominator of which is one thousand ninety-five and the numerator of which is the number

of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer;

(3) If the assistive device is leased, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfect security interest in the assistive device the current value of the written lease and refund to the consumer the amount that the consumer paid under the lease plus any collateral costs, less any reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the consumer's monetary obligation under the lease by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days the consumer used the device before reporting the nonconformity.

SECTION 6. To receive an assistive device of comparable quality, size, and function or a refund, the consumer shall offer to transfer possession of the nonconformity assistive device to the manufacturer. Not more than thirty days after such an offer the manufacturer shall provide the consumer with an assistive device of comparable quality, size and function or a refund. When the manufacturer provides the assistive device or refund, the consumer shall return the nonconforming assistive device to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

SECTION 7. To receive a refund due under a leased assistive device, a consumer shall offer to return the nonconforming assistive device to the lessor. Not more than thirty days after such an offer, the lessor of the assistive device shall provide the refund to the consumer. When the lessor provides the refund, the consumer shall return to the lessor the nonconforming assistive device. To receive a refund due under a leased assistive device, an assistive device lessor shall offer to transfer possession of the nonconforming assistive device to its manufacturer. Not more than thirty days after such an offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive

device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

SECTION 8. No person may enforce a lease against a consumer after the consumer receives a refund due under section (7) of this Act.

SECTION 9. Whenever an assistive device covered by a manufacturer's express warranty is tendered to the manufacturer or dealer from whom it was purchased, or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty applies, and at least one of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a rental assistive device reimbursement of up to twenty dollars per day. The applicable conditions are as follows:

(1) The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer or dealer designated by the manufacturer for repairs. If the dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within ten days, then the manufacturer has a cause of action against the dealer for reimbursement that it must pay.

(2) The defect, malfunction, or nonconformity is the same for which the assistive device has been tendered to the dealer on at least two previous occasions.

Any duty imposed on a manufacturer under this section applies for the period of the manufacturer's express warranty or for two years from the delivery of the assistive device to the consumer, whichever period of time ends sooner.

SECTION 10. This Act does not limit rights or remedies available to a consumer under any other law. Any waiver by a consumer of rights under this Act is void. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this Act. The court shall award a consumer who prevails in such an action twice the amount of pecuniary loss, together with cost, disbursements, and reasonable attorney fees and equitable relief that the court determines is appropriate.

SECTION 11. No nonconforming assistive device returned by a consumer or assistive device lessor in this state, or by a consumer or assistive device lessor in another state under similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

SECTION 12. Nothing in this Act may be interpreted to make the assistive device dealer or lessor responsible for the obligations of the manufacturer.

SECTION 13. This act shall take effect on July 1, 1997, the public welfare requiring it.